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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,920	01/15/2004	Scott A. Brandt	193.01	5118
37761 7590 08/20/2007 ERICKSON & KLEYPAS, L.L.C. 800 W. 47TH STREET, SUITE 401 KANSAS CITY, MO 64112			EXAMINER ARAQUE JR, GERARDO	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 08/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/757,920	<b>Applicant(s)</b> BRANDT, SCOTT A.	
	<b>Examiner</b> Gerardo Araque Jr.	<b>Art Unit</b> 3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/15/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1 – 16** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant claims a method of distributing sample quantities of paint. However, the body of the claim recites structural limitations (applicator head and bottle) that have nothing to do the method of the claim. That is to say, the applicant is claiming both a method and apparatus in a single claim.

4. In regards to **claims 1, 6, 11, and 14**, the applicant claims, "said paint applicator mounted on said applicator base on a side opposite said outlet of said bottle (Although claim 6 includes the terminology "**headwall**" the same deficiency is present)." The Examiner asserts that the disclosed subject matter would indicate that the paint applicator head is located at the bottom of the bottle and not at the outlet of the bottle, as is shown in the drawings.

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5. **Claims 1, 6, 11, and 14** recite the limitation "**bottles**" in the body of the said claims. There is insufficient antecedent basis for this limitation in the claim.
6. In regards to the **majority of the claims**, the applicant discloses the term "**applicator**". However, the applicant is vague and indefinite in not appropriately defining whether applicator is directed towards the applicator head, paint applicator, or applicator base. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1 – 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carol et al. (US PG Pub 2005/0082197 A1)** in view of **O'Connor (US PG Pub 2001/0047951 A1)**.

9. In regards to **claims 1 and 6**, **Carol** discloses a method of distributing sample quantities of paint comprising the steps of:

- a) filling containers with a selected quantity of a paint (**Page 4 Claim 34**);
- d) supplying a paint retailer with a quantity of said containers filled with the selected quantity of tinting base each having a paint applicator head and a sealing member attached thereto (**Page 4 Claim 34**).

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**Carol** discloses that the sealed container is a flexible pouch, in order to hold the paint, and with a cloth, in order to apply the paint. (**Page 4 Claim 28**). However, **Carol** fails to disclose wherein the container comprises:

b) removably attaching a paint applicator head across an outlet of each of said bottles; said paint applicator head including an applicator base and a paint applicator, said paint applicator mounted on said applicator base on a side opposite said outlet of said bottle, said applicator having an opening extending therethrough in communication with said paint applicator;

c) removably positioning a sealing member between each of said bottles and said applicator heads to extend across said outlet of each of said bottles.

**O'Connor**, however, discloses that it is old and well known to use a container, as discussed above, and an alternative means of holding and applying paint for use in paint sampling (**Page 3 ¶ 27**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teaching of **Carol's** sealed container in view of the teachings of **O'Connor's** paint container as an alternative means of holding and applying a paint sample.

10. In regards to **claims 2, 7, 12, and 15**, the Examiner asserts that the quantity disposed into the container does not affect how the method is carried out and that the applicant is silent about the criticality of the amount of paint disposed within the container. The container, as taught by **Carol**, is capable of performing the intended use.

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11. In regards to **claims 3, 8, 13 and 16**, **O'Connor** discloses wherein said paint applicator comprises a sponge pad (**Page 1 ¶ 7**).

12. In regards to **claims 4 and 9**, the Examiner asserts that it would have been obvious, from the teachings of the combination of **Carol** and **O'Connor**, that in order to produce the paint sample the paint applicator head would need to be removed, filled with the desire paint sample quantity, and reattached with the paint applicator head. **O'Connor** further discloses that a seal is provided in order to, obviously, prevent any paint from pouring out of the container (**Page 3 ¶ 27**).

13. In regards to **claims 5 and 10**, **O'Connor** discloses that the paint applicator head would obviously need to be removed in order to remove the seal member and then have the applicator head reattached in order to apply the paint to a surface (**Page 3 ¶ 27**).

14. In regards to **claims 11 and 14**, **Carol** discloses method of distributing sample quantities of paint comprising the steps of:

- a) filling containers with a selected quantity of a paint (**Page 4 Claim 34**);
- d) supplying a paint retailer with a quantity of said containers filled with the selected quantity of tinting base each having a paint applicator head and a sealing member attached thereto (**Page 4 Claim 34**).

**Carol** discloses that the sealed container is a flexible pouch, in order to hold the paint, and with a cloth, in order to apply the paint. (**Page 4 Claim 28**). However, **Carol** fails to disclose wherein the container comprises:

b) removably attaching a paint applicator head across an outlet of each of said bottles; said paint applicator head including an applicator base and a paint applicator, said paint applicator mounted on said applicator base on a side opposite said outlet of said bottle, said applicator having an opening extending therethrough in communication with said paint applicator;

c) removably positioning a sealing member between each of said bottles and said applicator heads to extend across said outlet of each of said bottles.

**O'Connor**, however, discloses that it is old and well known to use a container, as discussed above, and an alternative means of holding and applying paint for use in paint sampling (**Page 3 ¶ 27**). **O'Connor** further discloses that the paint applicator head would obviously need to be removed in order to remove the seal member and then have the applicator head reattached in order to apply the paint to a surface (**Page 3 ¶ 27**). The Examiner asserts that it would have been obvious, from the teachings of the combination of **Carol** and **O'Connor**, that in order to produce the paint sample the paint applicator head would need to be removed, filled with the desire paint sample quantity, and reattached with the paint applicator head. **O'Connor** further discloses that a seal is provided in order to, obviously, prevent any paint from pouring out of the container (**Page 3 ¶ 27**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teaching of **Carol's** sealed container in view of the teachings of **O'Connor's** paint container with a removable seal as an alternative means of holding and applying a paint sample.

**Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in the PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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